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OFFICE OF THE SECRETARIAT
November 19, 2008

VIA E-MAIL

Mr. David Stawick
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

**RE: Rule Certification (and Request for CFTC Approval). New York
Mercantile Exchange, Inc. Submission #08.125: New NYMEX Rule 9.00B
("Close-Out Netting")**

Dear Mr. Stawick:

The New York Mercantile Exchange, Inc. ("NYMEX" or "Exchange") is notifying the Commodity Futures Trading Commission ("CFTC" or "Commission") that it is self-certifying new NYMEX Rule 9.00B ("Close-Out Netting"). In addition, NYMEX is also requesting CFTC approval of this new rule. The text of Rule 9.00B is attached as Exhibit A. Rule 9.00B was presented to the Clearing House Risk Committee with the explanation attached hereto as Exhibit B. The Clearing House Risk Committee approved the proposed Rule as did the Chairman, Vice-Chairman and CEO, acting in accordance with the authority delegated to them by Rule 230.j.

New rule 9.00B is closely modeled upon CME Rule 818, which was self-certified by the Chicago Mercantile Exchange Inc. ("CME") and Chicago Board of Trade ("CBOT") by submission to the Commission dated November 14, 2008.

Rule 9.00B is a statement of the rights of Clearing Members in the event of certain defaults by or bankruptcy of NYMEX and consequently of the CME clearing house. Rule 9.00B provides that Clearing Members will have a right promptly to close-out their open positions at the Clearing House and net their obligations to and from the clearing house and the Exchange. We understand that such a rule is necessary to avoid certain capital charges that might otherwise be imposed on bank clearing members (or their bank parent) with respect to such Clearing Members' proprietary positions held at the Clearing House.

This request for Commission approval is occasioned by concerns that section 561(b)(2) of the Bankruptcy Code sets forth certain limitations to contractual netting rights that are applicable in the bankruptcy of a "commodity broker." In connection with efforts to secure a legal opinion as to the effectiveness of the close-out and netting rule, there was concern that the limitations might create interpretive issues if contested. Section 561(b)(3) of the Bankruptcy Code, however, provides an exception to the restrictions created by section 561(b)(2) if the offset right arises under a "netting agreement between a clearing organization (as defined in section 761) and another entity that has been approved by the Commodity Futures Trading Commission." We seek approval of Rule 9.00B to resolve any uncertainty.

Pursuant to Section 5c(c) of the Commodity Exchange Act ("Act") and CFTC Rule 40.6, the Exchange hereby certifies that the attached NYMEX rule amendments and new rule chapters comply with the Act, including regulations under the Act. These changes will be made effective on November 21, 2008. Additionally, as noted, pursuant to CFTC Rule 40.5(a), the Exchange hereby requests that Rule 9.00B be approved pursuant to Section 5c(c) of the Commodity Exchange Act and CFTC Rule 40.5.

Should you have any questions concerning the above, please contact Brian Regan, Managing Director, at (212) 299-2207 or the undersigned at (202) 715-8517.

Sincerely,



De'Ana H. Dow
Managing Director,
Government Relations

Attachments

cc: Robert Wasserman

EXHIBIT A

Rule 9.00B Close-Out Netting

A. Bankruptcy of the Exchange. If at any time the Exchange: (i) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding up or liquidation, and, in the case of any such proceeding or petition presented against it, such proceeding or petition results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for the Exchange's winding-up or liquidation, or (ii) approves resolutions authorizing any proceeding or petition described in clause (i) above (collectively, a "Bankruptcy Event"), all open positions in the Clearing House shall be closed promptly.

B. Default of the Exchange. If at any time the Exchange fails to comply with an undisputed obligation to pay money or deliver property to a Clearing Member that is due and owing in connection with a transaction on the Exchange or cleared by the Exchange, for a period of thirty days from the date that the Exchange receives notice from the Clearing Member of the past due obligation, the Clearing Member's open positions at the Clearing House shall be closed promptly.

C. Netting and Offset. At such time as a Clearing Member's positions are closed, the obligations of the Clearing House to a Clearing Member in respect of all of its proprietary positions, accounts, collateral and deposits to the guaranty fund shall be netted against the obligations of that Clearing Member in respect of such proprietary positions, accounts, collateral and obligations to the guaranty fund to the Clearing House and the Exchange. All open positions shall be valued in accordance with the procedures of Paragraph D of this Rule.

D. Valuation. As promptly as reasonably practicable, but in any event within thirty days of the Bankruptcy Event or default as described in Paragraph B of this Rule, the Exchange shall fix a U.S. dollar amount (the "Close-out Value") to be paid to or received from the Exchange by each Clearing Member. The Exchange shall exercise its discretion, acting in good faith and in a commercially reasonable manner, in adopting methods of valuation to produce reasonably accurate substitutes for the values that would have been obtained from the relevant market if it were operating normally. In determining a Close-out Value, the Exchange may consider any information that it deems relevant. Amounts stated in a currency other than U.S. Dollars shall be converted to U.S. Dollars at the current rate of exchange, as determined by the Exchange. If a Clearing Member has a negative Close-out Value it shall promptly pay that amount to the Exchange.

E. Interpretation in Relation to FDICIA. The Exchange intends that certain provisions of this Section be interpreted in relation to certain terms (identified by quotation marks) that are defined in the Federal Deposit Insurance Exchange Improvement Act of 1991 ("FDICIA"), as amended, as follows:

- (1) The Exchange is a "clearing organization."
- (2) An obligation of a Clearing Member to make a payment to the Exchange, or of the Exchange to make a payment to a Clearing Member, subject to a netting

agreement, is a "covered clearing obligation" and a "covered contractual payment obligation."

- (3) An entitlement of a Clearing Member to receive a payment from the Exchange, or of the Exchange to receive a payment from a Clearing Member, subject to a netting contract, is a "covered contractual payment entitlement."
- (4) The Exchange is a "member," and each Clearing Member is a "member."
- (5) The amount by which the covered contractual payment entitlements of a Clearing Member or the Exchange exceed the covered contractual payment obligations of such Clearing Member or the Exchange after netting under a netting contract is its "net entitlement."
- (6) The amount by which the covered contractual payment obligations of a Clearing Member or the Exchange exceed the covered contractual payment entitlements of such Clearing Member or the Exchange after netting under a netting contract is its "net obligation."
- (7) The By-Laws and Rules of the Exchange, including this Section, are a "netting contract."

EXHIBIT B

TO: Clearing House Risk Committee
FROM: CME Clearing
DATE: November 6, 2008
SUBJECT: Proposed Position Netting Rule

CME Clearing recently reviewed a netting rule that was proposed by the Options Clearing Corporation and filed with the SEC. The rule provides certain capital charge relief for bank clearing members (or their bank parent) with respect to such clearing members' proprietary positions in the event of a clearing house insolvency. CME Group has worked with outside counsel on a similar rule which will provide capital charge relief for clearing members that are banks or have a bank parent.

Attached for your review is a draft netting rule that is designed to provide capital charge relief for clearing members that are banks or have a bank parent. Currently, banks are required to take a Basle capital charge for their gross proprietary exposure to a clearing house. However, based on the proposed rule, the bank clearing member (or bank parent) would only be liable for its net proprietary exposure to the insolvent clearing house based on the provisions of the rule.

A clearing firm has requested that an opinion of counsel be prepared in conjunction with the rule and that request is currently being evaluated.